

## § 13.11

### § 13.11 Referral of Complaint and answer to the ALJ.

Upon receipt of an answer, the Reviewing Official will refer the matter to an ALJ by filing the Complaint and answer in accordance with § 13.26.

### § 13.12 Notice of hearing.

(a) When the ALJ receives the Complaint and answer, the ALJ will promptly serve a notice of hearing upon the Defendant in the manner prescribed by § 13.8.

(b) Such notice will include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the Representative of the Government and of the Defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

### § 13.13 Parties to the hearing.

(a) The parties to the hearing will be the Defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

### § 13.14 Separation of functions.

(a) The Investigating Official, the Reviewing Official, and any employee or agent of the Authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the Initial Decision or the review of the Initial Decision by the Authority Head, except as a witness or a Representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ will not be responsible to, or subject to the supervision or direction of, the Investigating Official or the Reviewing Official.

## 6 CFR Ch. I (1–10 Edition)

(c) Except as provided in paragraph (a) of this section, the Representative for the Government may be employed anywhere in the Authority, including in the offices of either the Investigating Official or the Reviewing Official.

### § 13.15 Ex parte contacts.

No party or Person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a Person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

### § 13.16 Disqualification of Reviewing Official or ALJ.

(a) A Reviewing Official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a Reviewing Official or an ALJ. Such motion will be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit will be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections will be deemed waived.

(d) Such affidavit will state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It will be accompanied by a certificate of the Representative of record that it is Made in good faith.

(e)(1) If the ALJ determines that a Reviewing Official is disqualified, the ALJ will dismiss the Complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case will be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Authority Head may determine the matter only as part of his or her review of the Initial Decision upon appeal, if any.